

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	88 CR 846 - 1	DATE	10/4/2001
CASE TITLE	USA vs. Charles Hayes		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Order. Hayes' motion for release is denied. (117-1)
- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.		Document Number	
No notices required.			
<input checked="" type="checkbox"/> Notices mailed by judge's staff.		number of notices	
Notified counsel by telephone.		date docketed	
Docketing to mail notices.		docketing deputy initials	
Mail AO 450 form.		10/4/2001	
Copy to judge/magistrate judge.	date mailed notice		
SN	courtroom deputy's initials	SN	
	Date/time received in central Clerk's Office	mailing deputy initials	

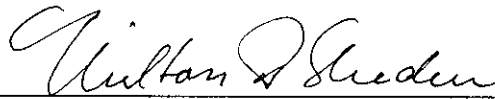
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Again the only predicate for launching such a collateral attack must be viewed as a motion under Section 2255, which it will be recalled provides a source of relief for any federal prisoner "claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence"--an accurate characterization of Hayes' current contention.

If then the current filing were to be viewed as a "second or successive motion" under Section 2255 because of Hayes' unsuccessful effort last year, it would have to be tendered first to our Court of Appeals for permission to proceed (see the last paragraph of Section 2255 as well as 28 U.S.C. §2244(3)). That basis of disposition might however be viewed as unfair to Hayes, given the fact that the Order did not state expressly that his earlier motion would be viewed as one under Section 2255. But that is of no moment, for the patent untimeliness of a current Section 2255 motion dooms Hayes' current effort in any event.

Accordingly Hayes' current motion must be and is denied. Although this Court remains of the same point of view (as expressed in the Order) that the law that compelled the imposition of a 15-year prison term operated with extraordinary harshness in his case, that does not justify ignoring the clear dictates of the law now (just as it could not have justified ignoring such clear dictates at

the time of sentencing).

A handwritten signature in cursive script, reading "Milton I. Shadur".

Milton I. Shadur
Senior United States District Judge

Date: October 4, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 88 CR 846-1
)	
CHARLES HAYES,)	
)	
Defendant.)	

MEMORANDUM ORDER

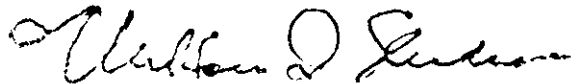
Charles Hayes ("Hayes"), whom this Court sentenced more than a decade ago (the judgment and commitment order is dated May 11, 1989) to a 15-year prison term because that was the statutory minimum applicable to his eight-count violation of 18 U.S.C. §922 ("Section 922"), has just submitted to this Court a letter with some bulky documents (his caption on the latter is "Notice of Fraud Upon the Court and Request for Disclosure of Grand Jury Minutes and Relevant [sic] Documents [sic]"). Because the time for any correction of an assertedly invalid sentence under Fed. R. Crim. P. 35 expired very shortly after the imposition of sentence, and because any opportunity to obtain post-conviction relief under 28 U.S.C. §2255 is also time-barred, Hayes disclaims as potential sources of relief those routes as well as the path of habeas corpus--instead he urges that his conviction was based on a void indictment.

It is certainly true that Hayes' situation is particularly unfortunate, because his prior felony convictions that caused the penalty for his current gun offenses to escalate dramatically--to carry the heavy 15-year mandatory minimum sentence rather than, as

this Court recalls, no more than a two-year term--had taken place decades earlier. Indeed, this Court suggested to his counsel at the time of sentencing that he consider, on appeal, seeking to attack that lengthy sentence on constitutional grounds of cruel and unusual punishment, while at the same time making it plain that such an effort was pretty much hopeless because of established precedent.

But that unfortunate situation does not validate Hayes' current contentions. As best this Court can determine, Hayes appears to suffer from the mistaken notion that every criminal statute must be linked with implementing regulations to become effective, so that the existence of a valid criminal charge depends on the coexistence of a statute and a regulation published in the Federal Register. That is simply wrong. Section 922 (the statute of conviction) is entirely valid on its own (without any need for an implementing regulation).

Hence any arguable underpinning for Hayes' claim of a void conviction falls away. None of the cases or materials that Hayes has cited carries any persuasiveness to suggest any other conclusion. Accordingly, treating Hayes' submission as a motion (perhaps the best available label), this Court denies that motion.



Milton I. Shadur
Senior United States District Judge

Date: July 25, 2000